IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.850 OF 1989
WITH
CROSS OBJECTION

The State of Maharashtra
through the Collector of Sangli ...Appellant

Vs.

Laxman Kallu Gondhali ...Respondent

Shri K.K.Tated for for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 17,2006.

ORAL JUDGMENT:

1. On 16th March 2006 this Appeal was called out. Though learned A.G.P. for State was present none appeared for the Respondent. Today when the Appeal is called out the learned A.G.P. Shri Tated is present for the Appellant. None for the Respondent.

2. The challenge in this Appeal is to the impugned Judgment and Award dated 7th January 1988 passed by the learned Civil Judge (Senior Division), Sangli. The land bearing Survey No.871 admeasuring 1.26 gunthas situated at Miraj, District Sangli was notified for acquisition by a notification under section 4 of the Land Acquisition Act, 1894 published on 4th March 1965. The Award under section 11 of the said act was made on 16th September 1974 by which the market value was fixed at the rate of Rs.2500 per acre. The reference application was made by the Respondent under section 18 of the said Act of 1894. Accordingly, the reference application

was sent to the Reference Court. The Reference court awarded compensation by taking the market value at the rate of Rs.6000/- per acre. The Reference Court also granted statutory benefits under Sections 23(1-A), 23(2) and 28 of the said Act of 1894 as amended by Act No.68 of 1984.

3. Shri Tated for the Appellant submitted that the Reference court has referred to the sale instances relied upon by the claimants and has recorded a finding of that none of the sale instances are relevant. He submitted that after recording the said finding, enhancement in compensation has been granted by the Reference Court. He submitted that the burden was on the claimant to establish the market value of the acquired land on the relevant date i.e. date of publication of notification under Section 4 of the said Act of 1894. He submitted that the Reference Court could not have awarded interest under Section 23(1-A) of the said Act of 1894.

4. I have considered the submissions. In paragraph 7 of its Judgment, the Reference court has considered the evidence regarding location of the acquired land and has come to the conclusion that the price fixed by the Land Acquisition Officer is exorbitant. In paragraph Nos.8 and 9 he has referred to the various sale instances. The first sale instance is of a sale deed which is produced at Exh.29 in some other land acquisition reference being L.A.C.No.30 of 1979. The date of the sale deed is 12th October 1978 which

is 13 years after the relevant date in this case. Therefore, the Reference Court has rightly discarded the said instances. The second sale instance is of a sale deed which is exhibited at Exh.27 in another land Acquisition reference bearing No.29 of 1979. The sale deed is of 6th May 1971. Thus, the sale deed is executed six years after the relevant date and hence the reference Court has not considered the sale deed to be a relevant. The respondent relied upon the certified copy of the Index-II in respect of a sale transaction executed on 22nd December 1972. Apart from the fact that the sale transaction is effected 7 years after the relevant date, the Reference Court has observed that the land subject matter of this transaction is far away from the acquired land. Another sale instance is of sale deed dated 2nd September 1971. The said sale instance is rejected by the reference court, in my opinion, rightly on the ground that the sale is effected 6 years after the relevant date and the land subject matter of the sale instance is far away from the acquired land. The reference court relied upon a certified copy of the Index-II in respect of the sale transaction dated 15th July 1968 where the land was sold at the rate of Rs.5000/- per acre. The Reference Court has observed that this sale instance is of some relevance. However, the said observation appears to have been totally incorrect. It is the transaction effected after 3 years of the relevant date in the present case. Secondly, a certified copy of the sale deed is not produced on record. Thirdly, the claimant has not stated in the

evidence that the land subject matter of the said sale instance was comparable to the acquired land. Moreover, no expert has been examined. Unless there is evidence to show that the land involved in the sale instance is comparable, the same could not have been relied upon. There is absolutely no evidence in that behalf.

5. One more sale instance is a certified copy of the Index-II relating to a sale transaction effected 7 years after the relevant date i.e. 3rd January 1972. The same has been rightly discarded by the Reference court. Another certified copy of Index-II which is produced on record in respect of a transaction dated 2nd September 1981. No comment is necessary about the said sale transaction. Reliance is placed on the certified copy of the Judgment and award in Land Acquisition Case No.15 of 1982. The relevant date in this case was 15th October 1971 which is more than 6 years after the relevant date in this case. Acquired land is situated in the City of Miraj. During the span of 6 years, it is obvious that there must be rapid increase in the market value. Therefore the said sale instance will not afford any basis for the determination of market value in this case. The Respondent relied upon the another Judgment in a Land Acquisition Case No.24 of 1971. The Reference Court has observed that the date of the notification under Section 4 of the said Act of 1894 in respect of the land involved in the said Reference is not known and therefore it cannot be

considered.

6. It must be noted that none of the documents evidencing the sale instances which are referred to above appeared to have been exhibited on record. Without exhibiting the said documents, the Reference Court nevertheless has considered it. It is obvious that none of the said sale instances can be said to be comparable to the acquired land in this case. The Respondent has examined himself and no other witness has been examined. In the examination-in-chief he has relied upon some sale instance in the form of the Award made in Land Acquisition Case No.30 of 1979. He has stated that he wants to rely upon the evidence recorded in the said reference. However, I find that none of the documents pertaining to the land acquisition reference No.30 of 1979 were placed on record and/or admitted in evidence.

7. Thus, it is a case of no evidence so far as market value is concerned. It is well settled that the claimant in a reference under Section 18 is in a position of a Plaintiff and the burden was on him to prove as to what was the market value on the relevant date. The Respondent failed to discharge the burden. Therefore the Reference Court committed an error in granting enhancement in compensation.

8. The Award under Section 11 of the said Act of 1894 has been made prior to 13th April 1982. Therefore, the

Respondent was not entitled to benefit of interest under Section 23(1-A) of the said Act of 1894 as amended by Act No.68 of 1984. As the Respondent is not entitled to enhancement in the market value, he is not entitled to interest under section 28 of the said Act of 1894. However, he will have to be paid solatium at the rate of 30% of the market value fixed under the Award made under section 11 of the said Act of 1894. Hence, Appeal must succeed.

9. Hence I pass the following order :

i) Impugned Judgment and Award dated 7th January 1988 is set aside.

ii) The Land Acquisition Reference No.23 of 1979 will stand dismissed.

iii) The Cross Objection is dismissed.

iv) It is clarified that the Respondent-claimant will be entitled to the solatium at the rate of 30% of the market value fixed under the Award made under Section 11 of the said Act of 1894.

v) There will be no order as to costs.

Judge.